

year, the Commissioner may disregard the mixed straddle account election.

(3) *Special rule for taxable years ending after 1983 and before September 1, 1986.* An election under this section to establish one or more mixed straddle accounts for any taxable year that includes July 17, 1984, and any taxable year that ends before September 1, 1986 (or, in the case of a corporation, October 1, 1986), must be made by the later of—

(i) December 31, 1985, or

(ii) The due date (without regard to automatic and discretionary extensions) of the return for the taxpayer's taxable year that begins in 1984 if the due date of the taxpayer's return for such year (without regard to automatic and discretionary extensions) is after December 31, 1985.

The election shall be made by attaching Form 6781 together with a statement to the taxpayer's income tax return, amended return, or other appropriate form that is filed on or before the deadline determined in the preceding sentence. The attached statement must designate with specificity, in accordance with paragraph (f)(2)(i) of this section, the class of activities for which a mixed straddle account is established. For example, if a fiscal year taxpayer's return (for its taxable year ending September 30, 1985) is due (without regard to extensions) on January 15, 1986, and the taxpayer intends to obtain an automatic extension to file the return, the election under this section for any or all of the fiscal years ending in 1984, 1985 or 1986 must be made on or before January 15, 1986, with the request for an automatic extension. Similarly, a calendar year taxpayer (whether or not such taxpayer has obtained an automatic extension of time to file) who has filed its 1984 income tax return before October 15, 1985, without making a mixed straddle account election for either 1984 or 1985, or both, may make the mixed straddle account election under this section for either or for both of such years with an amended return filed on or before December 31, 1985. The mixed straddle account elected on this amended return will be effective for all positions in the designated class of activities even if the taxpayer had elected straddle-by-

straddle identification as provided under § 1.1092(b)-3T for purposes of the previously filed 1984 income tax return. For taxable years beginning in 1984 and 1985, the election under this paragraph (f)(3) is effective for the entire taxable year. For taxable years beginning in 1983, an election shall be effective for that part of the year beginning after December 31, 1983, for which the election under § 1.1256(h)-1T or 1.1256(h)-2T is made. See § 1.6081-1T regarding an extension of time to file certain individual income tax returns.

(4) *Period for which election is effective.* For taxable years beginning on or after January 1, 1984, an election under this section, including an amendment to the election pursuant to paragraph (f)(1) of this section, shall be effective only for the taxable year for which the election is made. This election may be revoked during the taxable year for the remainder of the taxable year only with the consent of the Commissioner. An application for consent to revoke the election shall be filed with the service center with which the election was filed and shall—

(i) Contain the name, address, and taxpayer identification number of the taxpayer;

(ii) Show that the volume or nature of the taxpayer's activities has changed substantially since the election was made, and that the taxpayer's activities no longer warrant the use of such mixed straddle account; and

(iii) Any other relevant information.

If a taxpayer's election for a taxable year is revoked, the taxpayer may not make a new election for the same class of activities under paragraph (f)(1) of this section during the same taxable year.

(g) *Effective date.* The provisions of this section apply to positions held on or after January 1, 1984.

(Secs. 1092(b)(1), 1092(b)(2) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 98 Stat. 627; 26 U.S.C. 1092(b)(1), 1092(b)(2), 7805))
[T.D. 8008, 50 FR 3329, Jan. 24, 1985; 50 FR 12243, Mar. 28, 1985, as amended by T.D. 8058, 50 FR 42013, Oct. 17, 1985]

§ 1.1092(b)-5T Definitions (temporary).

The following definitions apply for purposes of §§ 1.1092(b)-1T through 1.1092(b)-4T.

(a) *Disposing, disposes, or disposed.* The term *disposing, disposes, or disposed* includes the sale, exchange, cancellation, lapse, expiration, or other termination of a right or obligation with respect to personal property (as defined in section 1092(d)(1)).

(b) *Hedging transaction.* The term *hedging transaction* means a hedging transaction as defined in section 1256(e).

(c) *Identified straddle.* The term *identified straddle* means an identified straddle as defined in section 1092(a)(2)(B).

(d) *Loss.* The term *loss* means a loss otherwise allowable under section 165(a) (without regard to the limitation contained in section 165(f)) and includes a write-down in inventory.

(e) *Mixed straddle.* The term *mixed straddle* means a straddle—

(1) All of the positions of which are held as capital assets;

(2) At least one (but not all) of the positions of which is a section 1256 contract;

(3) For which an election under section 1256(d) has not been made; and

(4) Which is not part of a larger straddle.

(f) *Non-section 1256 position.* The term *non-section 1256 position* means a position that is not a section 1256 contract.

(g) *Offsetting position.* The term *offsetting position* means an offsetting position as defined in section 1092(c)(2).

(h) *Position.* The term *position* means a position as defined in section 1092(d)(2).

(i) [Reserved]

(j) *Related person or flowthrough entity.* The term *related person or flowthrough entity* means a related person or flowthrough entity as defined in sections 1092(d)(4) (B) and (C) respectively.

(k) *Section 1256 contract.* The term *section 1256 contract* means a section 1256 contract as defined in section 1256(b).

(l) [Reserved]

(m) *Straddle.* The term *straddle* means a straddle as defined in section 1092(c)(1).

(n) *Successor position.* The term *successor position* means a position ("P") that is or was at any time offsetting to a second position if—

(1) The second position was offsetting to any loss position disposed of; and

(2) P is entered into during a period commencing 30 days prior to, and ending 30 days after, the disposition of the loss position referred to in paragraph (n)(1) of this section.

(o) *Unrecognized gain.* The term *unrecognized gain* means unrecognized gain as defined in section 1092(a)(3)(A).

(p) *Substantially identical.* The term *substantially identical* has the same meaning as substantially identical in section 1091(a).

(q) *Securities.* The term *security* means a security as defined in section 1236(c).

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

[T.D. 8007, 50 FR 3321, Jan. 24, 1985, as amended by T.D. 8070, 51 FR 1788, Jan. 15, 1986]

§ 1.1092(c)-1 Qualified covered calls.

(a) *In general.* Section 1092(c) defines a straddle as offsetting positions with respect to personal property. Under section 1092(d)(3)(B)(i)(I), stock is personal property if the stock is part of a straddle that involves an option on that stock or substantially identical stock or securities. Under section 1092(c)(4), however, writing a qualified covered call option and owning the optioned stock is not treated as a straddle under section 1092 if certain conditions, described in section 1092(c)(4)(B), are satisfied. Section 1092(c)(4)(H) authorizes the Secretary to modify these conditions to carry out the purposes of section 1092(c)(4) in light of changes in the marketplace.

(b) *Term limitation—(1) General rule.* Except as provided in paragraph (b)(2) of this section, an option is not a qualified covered call unless it is granted not more than 12 months before the day on which the option expires or satisfies term limitation and qualified benchmark requirements established by the Commissioner in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Special benchmark rule for an option granted not more than 33 months before the day on which the option expires—(i) In general.* The 12-month limitation described in paragraph (b)(1) of this section is extended to 33 months provided the lowest qualified benchmark is determined using the adjusted applicable